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**USTR RELEASES SUPER 301, SPECIAL 301
AND TITLE VII REPORTS**

United States Trade Representative Charlene Barshefsky today set forth the Clinton Administration's trade expansion priorities for the year 2000, announced seven enforcement actions to be taken at the World Trade Organization and reiterated the Administration's position on health-related Intellectual Property Rights (IPR) in developing nations. This announcement was made in the context of today's release of three annual reports to Congress, known as Super 301, Special 301, and Title VII.

"We have negotiated nearly 300 trade agreements since 1993, and used our enforcement tools on more than 100 occasions. Enforcement of these agreements is critical to trade expansion," said Ambassador Barshefsky. "We have made enforcement a top priority, as reflected once again in this year's Super 301, Special 301 and Title VII announcements."

"In general, our trading partners have made good progress in the implementation of existing commitments," noted Ambassador Barshefsky. "However, we remain concerned about certain failures to comply fully with WTO agreements. Therefore, we are pursuing WTO dispute settlement action in seven cases covering customs valuations practices, investment measures, and intellectual property rights. These cases underscore our determination to take vigorous action against foreign government practices that conflict with international obligations."

The Special 301 report also pays special attention to the Administration's policy on health-related IPR matters, especially HIV/AIDS issues in developing countries. President Clinton

announced last December that the United States is committed to helping developing countries gain access to essential medicines, and Ambassador Barshefsky reiterated that commitment today. “We have begun implementing a cooperative approach on health-related intellectual property matters to ensure that the application of U.S. trade law related to intellectual property remains sufficiently flexible to respond to public health crises. We are working closely with interested non-governmental organizations and industry to ensure that this policy is implemented effectively,” said Ambassador Barshefsky.

Ambassador Barshefsky also announced the Administration’s trade expansion priorities for 2000. In addition to the enforcement actions, these include: completing China’s accession to the WTO, securing enactment of legislation to promote trade with certain regions, advancing negotiations for the Free Trade Area of the Americas, and continuing multilateral negotiations to open markets to U.S. exports. (For a full description of USTR activities in these and other areas, *see* the President’s 1999 Annual Report on the Trade Agreements Program.)

The United States is pursuing WTO action in the following areas:

- ▶ ***Customs Valuation Practices:*** The United States will request WTO consultations with Brazil regarding its reference prices for certain textile products; and with Romania regarding its discriminatory reference prices for products such as clothing, poultry, and certain types of distilled spirits.
- ▶ ***Motor Vehicle Investment Measures:*** The United States will take the next step in its ongoing WTO dispute with India regarding measures governing investment in the automotive industry, such as requiring manufacturing firms to use, among other things, specified levels of local content. The United States will also request WTO consultations with the Philippines in a continuing effort to resolve questions concerning local content requirements on producers of motorcycles, automobiles and certain commercial vehicles.
- ▶ ***Intellectual Property Rights:*** The United States will request WTO dispute settlement consultations with Argentina regarding significant deficiencies in its patent regime, including its failure to grant exclusive marketing rights for certain technologies and to protect confidential test data submitted to government regulatory authorities for obtaining marketing approval. The United States will also consult with Brazil in the WTO regarding a longstanding difference of views on interpretation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) regarding a narrow aspect of Brazil’s patent regime that can only be resolved through WTO dispute settlement. The United States will also proceed to a WTO panel with respect to Denmark’s enforcement of intellectual property laws unless imminent progress is made.

The USTR has also described a number of trade practices of significant concern that may warrant stepped-up enforcement action in the near future. These include, among others:

- ▶ **European Union**-ongoing subsidization of Airbus by EU Member States;
- ▶ **Japan**-market access and competition problems in the flat glass sector and a significant and persistent pattern of discrimination that impedes access to Japan's public works market;
- ▶ **Korea**-access barriers in the pharmaceuticals and autos market;
- ▶ **Mexico**-minimum price regime for certain imported products; and
- ▶ **Intellectual Property Protection** in almost 60 countries, which are highlighted in the "Special 301" report.

BACKGROUND

Today's announcement of the Clinton Administration's trade expansion priorities and new WTO actions takes place in the context of the simultaneous release of three annual reports to Congress: Super 301, Special 301, and Title VII. These three reports build on the 2000 Trade Policy Agenda (released on March 2, 2000, *see* USTR News Release 00-16) and the 2000 National Trade Estimate (NTE) Report on Foreign Trade Barriers (released on March 31, 2000, *see* USTR News Release 00-23) and represent key provisions of U.S. trade law designed to promote compliance with trade agreements. These reports are prepared in close consultation with other U.S. government agencies and rely on information submitted by the public and U.S. embassies abroad.

These three reports are complemented by another key domestic trade law tool: Section 1377 of the Omnibus Trade and Competitiveness Act of 1988. Last month, the USTR completed its annual review of foreign countries' compliance with telecommunications trade agreements pursuant to Section 1377. This year's Section 1377 review focused on Japan's compliance with its WTO commitments on interconnection rates and alleged telecommunications trade barriers in Canada, Germany, Israel, Mexico, Peru, South Africa, Taiwan, and the United Kingdom (*see* USTR News Release 00-22, March 30, 2000, and USTR News Release 00-25, April 4, 2000).

"SUPER 301" REPORT ON TRADE EXPANSION PRIORITIES

- ▶ Super 301 – re-instituted by President Clinton on March 31, 1999 by Executive Order 13116 – provides a mechanism for the USTR annually to review U.S. trade expansion priorities and focus U.S. resources on eliminating significant unfair trade practices facing U.S. exports.
- ▶ This year's Super 301 report reviews U.S. trade expansion priorities, highlights the progress made in securing implementation of WTO commitments, initiates WTO dispute settlement in cases where countries are failing to meet their obligations, and focuses

attention on other significant unfair trade practices facing U.S. exports.

- ▶ The Super 301 report identifies top trade expansion priorities: (1) complete China's accession to the WTO; (2) secure enactment of legislation promoting trade with certain regions; (3) advance negotiations for the Free Trade Area of the Americas; (4) pursue multilateral negotiations to open world markets to U.S. exports; and (5) enhance U.S. monitoring and enforcement efforts.
- ▶ The report also highlights various successes that this Administration has had regarding implementation of the WTO commitments of our trading partners. The Administration has used U.S. trade tools (such as Super 301 and Section 1377), worked through WTO oversight bodies (such as the Committee on Agriculture), and pursued WTO dispute settlement to secure compliance with trade agreements. Some notable successes include:
 - ▶ a commitment on the part of the Government of Israel to terminate its discriminatory access charge on calls to/from North America (part of this year's 1377 process);
 - ▶ enhanced implementation of the WTO Agreement on Agriculture (in the WTO Committee on Agriculture); and
 - ▶ an agreement on expeditious elimination of India's import bans on 2,700 tariff lines of goods and a commitment by Canada to reduce its subsidized exports of dairy products (by prevailing in WTO dispute settlement).
- ▶ The Report also announces the use of WTO dispute settlement in four cases, covering auto investment measures in India and the Philippines and customs valuation practices in Brazil and Romania.
- ▶ Finally, the Super 301 Report identifies a number of country practices of significant concern, including EU Member State subsidization of Airbus, market access barriers in Japan's flat glass sector, and Mexico's customs valuation practices.

"SPECIAL 301" REPORT ON INTELLECTUAL PROPERTY RIGHTS

Ambassador Barshefsky also announced today the Administration's decision with respect to this year's review under the so-called "Special 301" provisions of the Trade Act of 1974, as amended.

"This decision reflects the Administration's continued commitment to aggressive enforcement of intellectual property rights. Intellectual property protection standards and enforcement have improved in part as a result of implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). In addition, actions announced today reflect progress made over the course of 1999 in resolving many long-standing problems," she said.

- ▶ The decisions announced by Ambassador Barshefsky include specific actions:
 - ▶ to invoke WTO dispute settlement consultation procedures with Argentina and Brazil, and to proceed to a WTO panel with Denmark unless progress is made.
 - ▶ to monitor China and Paraguay under Section 306 of the Trade Act of 1974, as amended. This means that USTR will be in a position to move directly to trade sanctions if there is slippage in either country's enforcement of bilateral IPR agreements.
 - ▶ to place 16 trading partners on the Special 301 Priority Watch List: Argentina, Dominican Republic, EU, Egypt, Greece, Guatemala, India, Israel, Italy, Korea, Malaysia, Peru, Poland, Russia, Turkey, and Ukraine. Additionally, there will be an "out-of-cycle" review scheduled for Italy, Korea and Macau.
 - ▶ to place 39 trading partners on the Watch List. These countries include ones being placed on the Watch List for the first time, such as Kazakhstan, Latvia, and Lithuania.
- ▶ Other WTO dispute settlement proceedings and out-of-cycle reviews will be initiated if necessary.
- ▶ The Special 301 Report also elaborates upon the Administration's health-related IPR policy.
 - ▶ Since December 1, USTR and Health and Human Services (HHS) staffs have worked together to address individual health-related intellectual property issues that have arisen with U.S. trading partners, as in the case of Thailand, as well as with respect to the health-related issues that have arisen in this year's Special 301 process. For the first time, HHS has participated actively as a member of the Special 301 Trade Policy Staff Sub-Committee that is charged with developing the Special 301 recommendations. The committee has taken health and development issues into account in accordance with the Administration's December 1 policy in making its Special 301 recommendations.
 - ▶ Since December 1, the United States has encouraged its trading partners facing a health care crisis to explore all options for extending access to effective treatments. The Administration has made clear that the final choice of what policies to employ is one for each government to make on its own. Should a government avail itself of the flexibility the WTO TRIPS Agreement provides to address a health care crisis, the United States will raise no objection, provided the policy employed is consistent with the provisions of the TRIPS Agreement.

"TITLE VII" REPORT ON DISCRIMINATORY FOREIGN GOVERNMENT PROCUREMENT PRACTICES

- ▶ The Title VII Report – also reinstated by Executive Order 13116 on March 31, 1999 – gives the USTR the means to address discriminatory foreign government procurement practices.
- ▶ This Year's Title VII Report announces the successful resolution of the 1996 Title VII identification of Germany for failing to provide an adequate remedies system to challenge procurement decisions in the heavy electrical sector. Since being identified, Germany has enacted legislation to reform its bid challenge system. Although the law is still relatively new, a precedent-setting decision in an August 1999 case demonstrated that losing bidders can now challenge procurement decisions in a German court and anticipate a fair ruling.
- ▶ As in previous years, this report calls attention to concerns with a number of procurement practices that, while not currently meeting the Executive Order's threshold for formal identification, require continued monitoring with the potential for future identification.
- ▶ For instance, this year's report again notes U.S. disappointment with a significant and persistent pattern of practices of discrimination that continue to impede American companies' access to Japan's public works sector despite commitments made by Japan in the bilateral public works agreements. Because of the need for urgent progress in addressing these problems, the report makes clear that the Clinton Administration expects their resolution in a timely manner. If this does not occur, the United States will initiate the steps necessary to identify Japan under Title VII.
- ▶ The other concerns specifically mentioned relate to general aspects of Taiwan's procurement regime, Canadian provinces' "buy Canada" price preferences, implementation of Mexico's new procurement laws and NAFTA provisions on tendering periods, Korean airport construction (currently in WTO dispute settlement), and Germany's "sect filter" purchasing restrictions.
- ▶ In addition, this report describes the Administration's efforts to reduce discriminatory foreign procurement practices by building and strengthening the international rule of law in a wide range of multilateral, regional and bilateral fora, including negotiations on WTO and FTAA procurement agreements, implementation of the NAFTA procurement chapter, the Organization for Economic Cooperation and Development and Organization of American States anti-corruption conventions, and military-to-military consultations on the use of offsets in defense trade.